



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/167467

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 20, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on October 01, 2015, at West Bend, Wisconsin.

The issue for determination is whether the evidence submitted the economic support agency meets standards necessary for sustaining an alleged FoodShare overpayment.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Anthony Gehring

Washington County Department of Social Services  
333 E. Washington Street  
Suite 3100  
West Bend, WI 53095

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.

2. Petitioner filed this appeal to contest a FoodShare and a BadgerCare+ overpayment. The BadgerCare+ case is the subject of a separate Division of Hearings and Appeals decision to be issued at a later time (case # MOP/167468).
3. The agency alleges Petitioner was overissued FoodShare benefits in the amount of \$1388.00 by failing to report employment and income.
4. The agency submitted a 69 page omnibus exhibit (Exhibit # 3 in this hearing record) through the Department of Health Services 'tracker' that, per agency testimony, was all of the notices concerning the FoodShare and BadgerCare+ overpayments and that those notices had been sent to Petitioner.
5. Upon review of Exhibit # 3 in preparation for writing this Decision it became apparent that Exhibit # 3 did not contain a notice of FoodShare overissuance or any FoodShare overpayment worksheets.

### **DISCUSSION**

A notice of overissuance is mandatory in a FoodShare overpayment case:

#### 7.3.1.8 Notice of Overissuance

A Notice of FS Overissuance (F-16028), a completed FS Overissuance Worksheet (F-16030) and a FS Repayment Agreement (F-16029) must be sent to the client for all types of claims.

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FoodShare Wisconsin Handbook (FSH), §7.3.1.8.

This FSH requirement follows Federal law. See 7 Code of Federal Regulation §273.18(e)(3).

Indeed such notices are fundamental to due process. The United States Court of Appeals for the 7<sup>th</sup> Circuit has long held that to be the case. In Dilda v. Quern, the Court found that a state agency had violated the due process of rights of public assistance recipients, because the notice advising them of the reduction or cancellation of their benefits failed to provide the recipient with a detailed notice showing the breakdown of income and allowable deductions. Dilda v. Quern, 612 F. 2d 1055 (7<sup>th</sup> Cir. 1980). Certainly that applies to an overpayment also.

Perhaps such notice was issued but without it in the record here I cannot sustain this FoodShare overissuance. Again, this Decision is for the FoodShare case only.

Finally, with all due respect to the agency I suggest a review of Operations Memo, §12-59, issued 11/8/12 and effective 12/10/12. At page 15, it states that a worker is required to enter a document type and a description of the document. A large omnibus exhibit does not accomplish that.

### **CONCLUSIONS OF LAW**

That a notice of overpayment is a mandatory due process requirement and without it the Division of Hearings and Appeals cannot sustain an overpayment claim.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency with instructions to reverse the overpayment involved here. This must be done within 10 days of the date of this Order.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 16th day of October, 2015

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 16, 2015.

Washington County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability